

REPRESENTATIVE FOR PETITIONER: Joshua Neal, Barrett & McNagny, LLP

REPRESENTATIVE FOR RESPONDENT: Eric Grossman, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Indi-Kid, Inc.,	)	Petitions:	79-032-14-2-8-00601-18
	)		79-032-15-2-8-00602-18
Petitioner,	)		79-032-17-2-8-00603-18
	)		79-032-18-2-8-00731-18
)		
v.	)	Parcel Nos.:	79-11-04-400-003.000-032
)		
)		
Tippecanoe County Assessor,	)	County:	Tippecanoe
)		
Respondent.	)	Assessment Years:	2014, 2015, 2017 & 2018

July 16, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Indi-Kid, Inc. sought exemptions for a property leased to Kindercare Learning Centers LLC for the 2014, 2015, 2017, and 2018 assessment years. For the 2014 assessment year, Indi-Kid failed to establish that it possessed an exempt purpose in its ownership of the subject property. For the remaining years, the law required that a for profit early childhood educational facility be owned by the educational provider in order to qualify for an exemption. Because Indi-Kid was not the educational provider, the subject property does not qualify for an exemption for those years either. Thus, we find the subject property to be 100% taxable for each year under appeal.

PROCEDURAL HISTORY

2. The Petitioner timely filed Form 136 applications for exemptions for assessment years 2014, 2015, 2017, and 2018 for its property located at 1811 Brady Lane in Lafayette, Indiana.¹ The Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) found the property 100% taxable for all these assessment years.
3. Indi-Kid filed Form 132 requests for review of the 2014, 2015 and 2017 denials on May 24, 2018, well past 45 days from the dates the Form 120s were mailed. The 2018 Form 132 was timely filed.
4. On January 17, 2019, the Board’s designated Administrative Law Judge, David Smith (“ALJ”), held a hearing on the petitions. Neither he nor the Board inspected the subject property. Victoria Russo-Steele was sworn and testified for the Petitioner. Tippecanoe County Assessor, Eric Grossman, was sworn and testified for the Respondent.
5. The following exhibits were admitted without objection:

Petitioner’s Exhibit 1:	Indi-Kid, Inc. corporate documents,
Petitioner’s Exhibit 2:	Kindercare #070748 corporate documents,
Petitioner’s Exhibit 3:	2014 Forms 132, 120 and 136,
Petitioner’s Exhibit 4:	2015 Forms 132, 120 and 136,
Petitioner’s Exhibit 5:	2017 Forms 132, 120 and 136,
Petitioner’s Exhibit 6:	2018 Forms 132, 120 and 136,
Petitioner’s Exhibit 7:	Income and enrollment figures for 2014, 2015, 2016, 2017 and 2018,
Petitioner’s Exhibit 8:	Kindercare #070748 Lease Agreement,
Petitioner’s Exhibit 9:	Facility staff listings and bios,
Petitioner’s Exhibit 10:	Facility enrollment calculations,
Petitioner’s Exhibit 11:	Class schedules,
Petitioner’s Exhibit 12:	Facility program and lesson plan descriptions,
Petitioner’s Exhibit 13:	Interior photographs of facility,
Petitioner’s Exhibit 14:	Kindercare Enrollment Agreement form,
Petitioner’s Exhibit 15:	2013-2018 “Paths to Quality” facility certificates,

¹ The Form 136 applications were filed by several different entities including Hamilton Federal Savings and Loan Association of Noblesville, Knowledge Universe Education LLC, and Kindercare Learning Centers LLC. Because the Form 132 applications were all filed on behalf of Indi-Kid, LLC, we treat it as the petitioner for the purposes of these appeals.

Petitioner’s Exhibit 16: Affidavit of Bethany Sebesta.

Respondent’s Exhibit 1: Property Record Card for subject property,
Respondent’s Exhibit 2: Narrative procedural history and outline of exemption applications and determinations,
Respondent’s Exhibit 3: 2014, 2015, 2017 and 2018 Form 120s,
Respondent’s Exhibit 4: 2014, 2015, 2017 and 2018 Form 132s,
Respondent’s Exhibit 5: *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010),
Respondent’s Exhibit 6: Indiana Code § 6-1.1-10,
Respondent’s Rebuttal Ex. 1: List of mailing addresses for denial notices.

6. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) a digital recording of the hearing.

FINDINGS OF FACT

7. Indi-Kid, Inc. owns the subject property. It has leased the property continuously to Kindercare since 1989. The lease is a triple net lease under which Kindercare is responsible for all utilities, property taxes, and maintenance throughout the entire lease period. The lease contains a right of first refusal for Kindercare should Indi-Kid wish to sell the property. In addition, it has a non-compete clause that prevents Indi-Kid from leasing property within three miles of the subject to a provider similar to Kindercare. *Russo-Steele testimony; Pet’r Ex. 8.*
8. Victoria Russo-Steele, a District Leader with Kindercare, testified about its programs. She has extensive experience in early childhood education. She currently manages 22 Kindercare facilities in the Lafayette area, including the facility housed in the subject property. *Russo-Steele testimony.*
9. Russo-Steele provided substantial testimony about the facility, the staff and their experience, as well as Kindercare’s educational programs and curriculum. She also testified about enrollment figures, “Paths to Quality” certifications, as well as other

accreditations the facility has earned. *Russo-Steele testimony; Pet'r Exs. 2, 9, 10, 11, 12, 13, 14, and 15.*

10. On cross-examination, Russo-Steele stated she had no knowledge of Indi-Kid's purpose. In addition, she testified that Indi-Kid provided no resources to Kindercare beyond their landlord-tenant relationship. *Russo-Steele testimony.*
11. Russo-Steele made some references to personal property such as tables, art supplies, and educational materials. But neither party provided any detailed evidence regarding what personal property was under appeal or how it was used in each assessment year. *Russo-Steele testimony.*

BURDEN OF PROOF

12. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Hamilton County Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010). A taxpayer bears the burden of proving it is entitled to an exemption. *Oaken Bucket*, 938 N.E.2d at 657. Exemption statutes are strictly construed against the taxpayer. Every exemption case "stand[s] on its own facts," and it is the Petitioner's duty to walk the Board through the analysis. *Id.*

CONCLUSIONS OF LAW

A. Timeliness of Form 132s

13. We initially address the Assessor's argument that the 2014, 2015, and 2017 Form 132s were untimely because they were filed well after the 45 day deadlines running from the PTABOA determinations. Indi-Kid argues that it never received the Form 120s, and thus the Form 132s it filed in 2018 should be accepted as timely. The evidence in the record on this point is conflicting at best depending on the year at issue. Because we find Indi-Kid is not eligible for any exemption regardless, and our general preference to address cases on the merits, we decline to address this claim.

B. 2014 Assessment Year

14. For the 2014 assessment year, Indi-Kid claimed it should receive an educational exemption under Indiana Code § 6-1.1-10-16. That statute provides that property that is owned, occupied and used for educational purposes is exempt from taxation. While a taxpayer must show that its property is owned for exempt purposes, occupied for exempt purposes, and predominantly used for exempt purposes, unity of ownership, occupancy, and use by a single entity is not required. *Oaken Bucket*, 938 N.E.2d at 657; *see also*, *Sangralea Boys Fund v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954 (Ind. Tax Ct. 1997). Where that unity does not exist, the taxpayer must show that each entity possesses its own exempt purpose. *Id.*
15. It is undisputed that Indi-Kid owns the subject property. Even were we to find that Kindercare used and occupied the subject property for exempt purposes, Indi-Kid would still need to show that it owned the property for exempt purposes. But it did little to show this factor. Russo-Steele, Indi-Kid's only witness, testified that it was not involved in providing the services Kindercare offers. She further stated that she knew nothing about Indi-Kid's purposes. Nor is there anything in its articles of incorporation that indicates an educational purpose. Although Indi-Kid claimed that certain lease clauses such as the non-compete and the right of first refusal evidenced an exempt purpose, it did nothing to show these were anything beyond typical clauses in a commercial lease. Because Indi-Kid failed to show that it had an exempt purpose in owning the property, we find the subject property to be 100% taxable for the 2014 assessment year.

C. 2015 and 2017 Assessment Years

16. We now address the claims for the 2015 and 2017 assessment years. Effective January 1, 2015 the legislature enacted I.C. § 6-1.1-10-46. This section now provides the sole avenue by which property used for for-profit early childhood education can receive an exemption. In relevant part, it reads:

(a) Tangible property owned, occupied, or used by a for-profit provider of early childhood education services to children who are at least four (4) but less than six (6) years of age is exempt from property taxation under section 16 of this chapter only if all the following requirements are satisfied:

- (1) The primary purpose of the provider is educational.
- (2) The provider is the property owner and the provider also predominantly occupies and uses the tangible property for providing early childhood education services to children who are at least four (4) but less than six (6) years of age...

I.C. § 6-1.1-10-46.

17. The parties agreed this statute controlled for assessment years 2015 and beyond. This statute clearly established that, in addition to other requirements, the owner, occupant, and predominant user of the property for which an exemption is sought must be the same entity. The evidence here shows that while the provider, Kindercare, is the occupant and user of the subject property, Indi-Kid, Inc. is the owner. Thus, the subject property fails to qualify for an exemption and we find the property to be 100% taxable for the 2015 and 2017 assessment years.

D. 2018 Assessment Year

18. Although the same statute controls for the 2018 assessment year, the analysis is somewhat complicated by another change in the law. Effective April 28, 2017, the legislature amended the statutory definition section of the property tax code to expand the definition of an “owner”. Specifically, I.C. § 6-1.1-1-9(f) was amended to say:

When a life tenant of real property or a holder of a tenancy for a term of years in real property is in possession of the real property, only the life tenant or the holder of a tenancy for a term of years is the owner of that property. *P.L.255-2017, SEC.4.*²

² This statute was again amended in 2019 to remove the tenancy for a term of years language. *P.L.257-2019, SEC.11.*

19. Indi-Kid argues that this new statute means that Kindercare, as a tenant in possession of the property, is the owner for the purposes of I.C. § 6-1.1-10-46 and thus entitled to an exemption.³ But there is a significant problem with this interpretation.
20. The early childhood education exemption statute, I.C. § 6-1.1-10-46, was enacted several years before the definition of owner was amended. Read by itself, that statute clearly excludes leased properties from obtaining exemptions for early childhood education. Had the legislature intended to broaden this exemption, it could have amended the statute itself rather than the general definition of owner. In addition, accepting Indi-Kid's interpretation would render I.C. § 6-1.1-10-46's requirement that the provider also be the property owner meaningless. Regardless of the amended definition, common sense indicates that Indi-Kid clearly has an ownership interest in the property because it leases the property to Kindercare. But Indi-Kid is not the educational provider as required by I.C. § 6-1.1-10-46. For these reasons, we find the subject property to be 100% taxable for the 2018 assessment year.

E. Personal Property

21. Finally, we address the claims for personal property exemptions for each assessment year. Although it is possible that some of the personal property at issue qualifies for an exemption, the evidence in support of this is lacking. Indi-Kid did not provide an inventory of personal property, records of purchases, or anything else to show what was at issue for each assessment year. In addition, it failed to show what personal property was used for educational purposes as opposed to general child care. For these reasons, we cannot grant any relief as to the personal property.

CONCLUSION

In accordance with the above findings of fact and conclusions of law, we find the subject property to be 100% taxable for each of the years at issue.

³ We note this argument is somewhat inconsistent with the Form 132 filed for 2018 in which "Indi-Kid, LLC" is listed as the property owner.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>